

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: March 17, 2009

Consent
 Ordinance

Regular
 Public Hearing

Department: Parks and Recreation

Submitted By: Parks and Recreation Department

Submitted For: Parks and Recreation Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: Agreement with Third and Division, Inc. for the period March 17, 2009, through May 2, 2010, in an amount not-to-exceed \$5,000 for the recreational program for youth.

Summary: This funding is to assist with costs for the recreational program for youth held on Friday nights at the Third and Division Recreation Center in West Palm Beach. Approximately twenty youth participate at each weekly session. The Agreement allows for the reimbursement of eligible project costs incurred subsequent to February 2, 2009. Funding is from the Recreation Assistance Program (RAP) District 7 Funds. District 7 (AH)

Background and Justification: Third and Division, Inc. is a not-for-profit organization whose mission is to provide positive role models for youth living in the north-central Palm Beach County area by offering Friday night recreational activities. Third and Division uses computers to provide on-line games and learning opportunities in a safe environment at 718 Third Street in West Palm Beach.

The annual cost plus start up equipment- costs for the program is approximately \$5,000 for capital outlay expenses (computers), supplies, contractual services (instructors), refreshments, insurance, and other miscellaneous expenses related to the recreational activities. The \$5,000 from District 7 RAP funding will offset costs for the first year of the programs. The Agreement has been executed on behalf of the Third and Division, Inc., and now needs to be approved by the Board of County Commissioners.

Attachment: Agreement

Recommended by: 
Department Director

2/12/09
Date

Approved by: 
Assistant County Administrator

2/26/09
Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2009	2010	2011	2012	2013
Grant Expenditures	<u>5,000</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>5,000</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

Is Item Included in Current Budget? Yes X No _____
 Budget Account No.: Fund 3600 Department 583 Unit R917
 Object 8201 Program N/A

B. Recommended Sources of Funds/Summary of Fiscal Impact:

FUND: Park Improvement Fund/Recreation Assistance Program
 UNIT: RAP/Transportation Improvement Fund-District 7

3600-583-R917-022-8201 \$5,000

C. Departmental Fiscal Review: ckopelaki

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:

Jan Burt 2/24/09
 OEMB
 ID 2/26/09
 2/18/09

Dr. J. Jacobson 2/25/09
 Contract Development and Control

B. Legal Sufficiency:

This Contract complies with our contract review requirements.

Anne Delgado 2/26/09
 Assistant County Attorney

C. Other Department Review:

 Department Director

**AGREEMENT BETWEEN PALM BEACH COUNTY AND THIRD AND DIVISION, INC.
FOR THE RECREATION CENTER PROGRAM FOR YOUTH**

THIS AGREEMENT is made and entered into on _____, by and between Palm Beach County, a political subdivision of the State of Florida, hereinafter referred to as "County" and Third and Division, Inc., a Florida not-for-profit corporation, hereinafter referred to as "Third and Division".

WITNESSETH:

WHEREAS, Third and Division is a not-for-profit organization whose mission is to provide positive role models for youth living in north Palm Beach County by offering Friday recreational activities for children; and

WHEREAS, Third and Division uses computers to provide on-line games and learning opportunities in safe environment at 718 Third Street in West Palm Beach; and

WHEREAS, the recreational activities have twenty (20) youth participants at each weekly session; and

WHEREAS, start up expenses for the recreational activities are anticipated to cost approximately \$5,000 for capital outlay expenses (computers), supplies, contractual services (instructors), refreshments, insurance, and other miscellaneous expenses related to the recreational activities; and

WHEREAS, Third and Division has requested that County provide \$5,000 to help offset the cost of expenses for the recreational activities; and

WHEREAS, funding to help offset costs for the recreational activities in an amount not-to-exceed \$5,000 is available from the Recreation Assistance Program (RAP) – District 7; and

WHEREAS, educational and recreational programs for youth serve a public benefit; and

WHEREAS, both parties desire to enter into this Agreement.

NOW THEREFORE, in consideration of the covenants and promises contained herein, the parties hereby agree to the following terms and conditions:

1. County agrees to fund an amount not-to-exceed \$5,000 to Third and Division to help offset costs for recreational activities to include capital outlay expenses (computers),

supplies, contractual services (instructors), refreshments, insurance, and other miscellaneous expenses related to the recreational activities as described in Exhibit "A", attached hereto and incorporated herein, and hereinafter referred to as the "Project".

2. County will use its best efforts to provide said funds to Third and Division on a reimbursement basis within forty-five (45) days of receipt of the following information:

a. A written statement that the Project, as specified herein, was carried out in accordance with this Agreement; and

b. A Contract Payment Request Form and a Contractual Services Purchases Schedule Form attached hereto and made a part hereof as Exhibit "B", which are required for each and every reimbursement requested by Third and Division. Said information shall list each invoice paid by Third and Division and shall include the vendor invoice number; invoice date; and the amount paid by Third and Division along with the number and date of the respective check or proof of payment for said payment. Third and Division shall attach a copy of each vendor invoice paid by Third and Division along with a copy of the respective check or proof of payment and shall make reference thereof to the applicable item listed on the Contractual Services Purchases Schedule. Further, Third and Division's Program Administrator and Project Financial Officer shall certify the total funds spent by Third and Division on the Project and shall also certify that each vendor invoice, as listed on the Contractual Services Purchases Schedule was paid by Third and Division and approved by Third and Division as indicated.

3. Third and Division incurred expenses for the Project beginning on February 2, 2009. Those costs incurred by Third and Division for the Project, approved and submitted accordingly by Third and Division subsequent to February 2, 2009, are eligible for reimbursement by County pursuant to the terms and conditions hereof.

4. RAP funds may be used as a match for other local, state, or federal grant programs, but Third and Division may not submit reimbursement requests for the same expenses to the County as other fund sources to receive duplicate reimbursement for the same expenses.

5. Third and Division warrants that it is an active not-for-profit corporation, duly chartered and registered with the Florida Department of State, Division of Corporations.

6. Third and Division agrees, warrants, and represents that all of the employees and participants in the Project will be treated equally during employment and for the provision of

services without regard to residency, race, color, religion, disability, sex, age, national origin, ancestry, marital status, sexual orientation, gender identify, or expression.

7. Third and Division shall be responsible for the operation and maintenance of the Project, including all associated costs.

8. The term of this Agreement shall be until May 2, 2010, commencing upon the date of execution by the parties hereto.

9. The parties agree that, in the event Third and Division is in default of its obligations under this Agreement, the County shall provide Third and Division thirty (30) days written notice to cure the default. In the event Third and Division fails to cure the default within the thirty (30) day cure period, the County shall have no further obligation to honor reimbursement requests submitted by Third and Division for the Project deemed to be in default and Third and Division shall return any County RAP funds already collected by Third and Division for that Project.

10. Notwithstanding any provision of this Agreement to the contrary, this Agreement may be terminated by the County, without cause, upon thirty (30) days prior written notice to the other party. This Agreement may be terminated by the County with cause, upon expiration of the thirty (30) day cure period provided for in Section 9 above.

11. Third and Division shall complete the Project by February 2, 2010, and invoices and checks submitted for reimbursement must be dated within the project time frame of February 2, 2009, through February 2, 2010. Third and Division shall provide its final reimbursement request(s), including a project completion statement and reimbursement documentation as indicated in Section 2 above on or before May 2, 2010. Upon written notification to County at least ninety (90) days prior to that date Third and Division may request an extension beyond this period for the purpose of completing the Project. County shall not unreasonably deny Third and Division's request for said extension.

12. In the event Third and Division ceases to exist, or ceases or suspends the Project for any reason, any remaining unpaid portion of this Agreement shall be retained by County, and County shall have no further obligation to honor reimbursement requests submitted by Third and Division. The determination that Third and Division has ceased or suspended the Project shall be made by County and Third and Division agrees to be bound by County's determination.

13. Third and Division agrees to abide by, and be governed by, all applicable federal, state, county, and municipal laws, including but not limited to, Palm Beach County's ordinances, as said laws and ordinances exist and are amended from time to time. In entering into this Agreement, Palm Beach County does not waive the requirements of any County or local ordinance or the requirements of obtaining any permits or licenses normally required to conduct business or activity conducted by Third and Division. Failure to comply may result in County's refusal to honor reimbursement requests for the Project.

14. County reserves the right to withhold reimbursement if the Project is not completed as specified in Exhibit "A".

15. It is understood and agreed that Third and Division is merely a recipient of County funding and is an independent contractor and is not an agent, servant or employee of County or its Board of County Commissioners. It is further acknowledged that the County only contributes funding under this Agreement and operates no control over the Project. In the event a claim or lawsuit is brought against County or any of its officers, agents or employees, Third and Division shall indemnify, save and hold harmless and defend the County, its officers, agents, and/or employees from and against any and all claims, liabilities, losses, judgments, and/or causes of action of any type arising out of or relating to any act or omission of Third and Division, its agents, servants and/or employees in the performance of this Agreement. The foregoing indemnification shall survive termination of this Agreement.

In consideration for reimbursement of costs incurred prior to the term of this Agreement, the foregoing indemnification shall apply not only during the term of this Agreement but also for the period prior to this Agreement for which Third and Division is eligible to receive reimbursement from the County.

16. Third and Division shall, at its sole expense, agree to maintain in full force and effect at all times during the life of this Agreement, insurance coverages and limits (including endorsements), as described herein. Third and Division shall agree to provide the County with at least ten (10) day prior notice of any cancellation, non-renewal or material change to the insurance coverages. The requirements contained herein, as well as County's review and acceptance of insurance maintained by Third and Division are not intended to and shall not in any manner limit or qualify the liabilities and obligations

assumed by Third and Division under this Agreement.

Commercial General Liability. Third and Division shall maintain Commercial General Liability at a limit of liability not less than \$500,000 Each Occurrence. Coverage shall not contain any endorsement excluding Contractual Liability or Cross Liability unless granted in writing by County's Risk Management Department. Third and Division shall provide this coverage on a primary basis.

Worker's Compensation Insurance & Employer's Liability. Third and Division shall maintain Worker's Compensation & Employer's Liability in accordance with Florida Statutes Chapter 440. Third and Division shall provide this coverage on a primary basis.

Waiver of Subrogation. Third and Division hereby waives any and all rights of Subrogation against the County, its officers, employees and agents for each required policy. When required by the insurer, or should a policy condition not permit an insured to enter into a pre-loss agreement to waive subrogation without an endorsement, then Third and Division shall agree to notify the insurer and request the policy be endorsed with a Waiver of Transfer of Rights of Recovery Against Others, or its equivalent. This Waiver of Subrogation requirement shall not apply to any policy when a condition to the policy specifically prohibits such an endorsement, or voids coverage should Third and Division enter into such an agreement on a pre-loss basis.

Certificate(s) of Insurance. Prior to execution of this Agreement by the County, Third and Division shall deliver to the County a Certificate(s) of coverage evidencing that all types and amounts of insurance coverages required by this Agreement have been obtained and are in full force and effect. Such Certificate(s) of Insurance shall include a minimum ten (10) day endeavor to notify due to cancellation or non-renewal of coverage. Certificate holder's address shall read Palm Beach County, c/o Parks and Recreation Department, 2700 Sixth Avenue South, Lake Worth, FL 33461, Attention: Administrative Support Manager.

Right to Review. County, by and through its Risk Management Department, in cooperation with the contracting/monitoring department, reserves the right to review, modify, reject or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Agreement. County reserves the right, but not the obligation, to review and reject any insurer providing coverage because of its poor financial condition or failure to operate legally.

17. Upon request by County, Third and Division shall demonstrate financial accountability through the submission of acceptable financial audits performed by an independent auditor.

18. Third and Division shall maintain books, records, documents and other evidence that sufficiently and properly reflect all costs of any nature expended in the performance of this Agreement for a period of not less than five (5) years. Upon advance notice to Third and Division, County shall have the right to inspect and audit said books, records, documents and other evidence during normal business hours.

19. The County and Third and Division may pursue any and all actions available under law to enforce this Agreement including, but not limited to, actions arising from the breach of any provision set forth herein.

20. This Agreement shall be governed by the laws of the State of Florida and any and all legal action necessary to enforce this Agreement shall be held in Palm Beach County.

21. As provided in Section 287.132-133, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, Third and Division certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the thirty six (36) months immediately preceding the date hereof. This notice is required by Section 287.133 (3) (a), Florida Statutes.

22. This Agreement represents the entire agreement between the parties and supersedes all other negotiations, representations, or agreement, written or oral, relating to this Agreement. This Agreement may be modified and amended only by written instrument executed by the parties hereto.

23. Any notice given pursuant to the terms of this Agreement shall be in writing and hand delivered or sent by U.S. mail. All notices shall be addressed to the following:

As to the County:
Director of Parks and Recreation
Palm Beach County Parks and Recreation Department
2700 Sixth Avenue South
Lake Worth, Florida 33461

As to Third and Division:
President
Third and Division, Inc.
718 Third Street
West Palm Beach, Fl 33401

24. This Agreement is made solely and specifically among and for the benefit of the parties hereto, and no other person shall have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

IN WITNESS WHEREOF, the undersigned parties have signed this Agreement on the date first above written.

ATTEST:
SHARON R. BOCK, Clerk & Comptroller

PALM BEACH COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Commissioner John F. Koons, Chairman

WITNESSES:

Third and Division, INC.
FEI Number: 311758328

Cheryl R. ...
Lois S. Washington

By: *William Washington*
Name (Type or Print)
Director
Title
William Washington
Signature

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND CONDITIONS

By: _____
County Attorney

By: *Dennis L. Eshleman*
Dennis L. Eshleman, Director
Parks and Recreation Department

**Recreation Assistance Program (RAP)
Exhibit "A" to Agreement**

Name of Agency: Third and Division, Inc.
Mailing Address: 718 Third Street, West Palm Beach, FL 33401
Employer Identification Number: 311758328
Name of President: Rev. William Washington
Name of Executive Director: Rev. William Washington
Project Liaison Information:

Name: Rev. William Washington
Telephone #: 561-832-9312
Fax #: 561-832-9312
e-mail: billwashjr@comcast.net

Purpose/Mission of Agency: Our mission is to provide positive role models for youth living in northwest West Palm Beach, FL through recreational activities.

PROJECT INFORMATION

1. Name of Project: Recreation Center Program for Youth
2. Project Description
 - General (Project Scope) including Recreational/Cultural Aspects:

We will use computers to provide online games and learning opportunities, such as Jet ski, 4 wheel, crash football, etc.
 - Public Purpose: To provide a safe place for recreation activities for youth from age 7 years to 16 years living in northwest West Palm Beach, FL
 - Location and Date: Activities will be provided at 718 Third Street, West Palm Beach, FL, every Friday beginning in February 2009 to through February 2010
 - Anticipated Number of Participants/Users: 20 youth per weekly session
3. Project Elements: List anticipated broad categories of Expenditure Items such as capital outlay, contractual services, personnel costs, operational expenses, equipment, and "Other Miscellaneous Project expenses". Do not include expenditure line item budget/ amounts.

Capital outlay (computers); supplies, contractual services (instructors), refreshments, insurance, and other miscellaneous expenses related to the Youth Recreation Program
4. Estimated Lump Sum Total for Project: \$ 5,000
5. Project Initiation date (date of first invoice for which reimbursement will be requested) and anticipated End date (date which project will be completed and all invoices paid). February 2, 2009 to February 2, 2010

Note: Invoices and copies of proof of payment documents will be required for Project/Program reimbursement after the RAP Agreement is approved by the Board of County Commissioners. Do not submit reimbursement documentation at this time. After the Agreement is approved, and the reimbursement request is submitted, all invoices and checks must be dated within the stated project time frame AND Categories for Project Elements must be listed in Section 3 above in order to be eligible for RAP reimbursement.

6. Required Attachment:
Certificate of Insurance X

Amount of Recreation Assistance Program Funding awarded \$ 5,000
District 7
(filled in by County)

Form available online by request. Contact Susan Yinger at syinger@pbcgov.com



PALM BEACH COUNTY
PARKS AND RECREATION DEPARTMENT

EXHIBIT B

CONTRACT PAYMENT REQUEST

Date _____

Grantee: _____ Project Name: _____

Submission #: _____ Reimbursement Period: _____

Item	Key	Project Costs This Submission	Cumulative Project Costs
Contractual Services	(C)	_____	_____
Salary & Wages (% of salaries)	(S)	_____	_____
Materials, Supplies, Direct Purchases	(M)	_____	_____
Equipment	(E)	_____	_____
Travel	(T)	_____	_____
Indirect Costs	(I)	_____	_____
TOTAL PROJECT COSTS		=====	=====

Key Legend

- C = Contractual Services
- S = Salary & Wages
- M = Materials, Supplies, Direct Purchases
- E = Equipment
- T = Travel
- I = Indirect Costs

Certification: I hereby certify that the above expenses were incurred for the work identified as being accomplished in the attached progress reports.

Certification: I hereby certify that the documentation has been maintained as required to support the project expenses reported above and is available for audit upon request.

Administrator

Date

Financial Officer

Date

PBC USE ONLY

County Funding Participation \$ _____

Total Project Costs To Date: \$ _____

County Obligation To Date \$ _____

County Retainage (_____ %) \$ _____

County Funds Previously Disbursed \$ _____

County Funds Due this Billing \$ _____

Reviewed and Approved By: _____
PBC Project Administrator Date

Department Director Date

